

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
OSAGE MINERALS COUNCIL,	)	
	)	
Intervenor-Plaintiff,	)	
	)	
v.	)	Case No. 14-CV-704-GKF-JFJ
	)	
OSAGE WIND, LLC;	)	
ENEL KANSAS, LLC; and	)	
ENEL GREEN POWER NORTH AMERICA, INC.,	)	
	)	
Defendants.	)	

**THE UNITED STATES' NOTICE OF THE COURT'S PRECLUSION OF  
DEFENDANTS' EQUITABLE, AFFIRMATIVE DEFENSES (Dkt. 207)**

COMES NOW Plaintiff, the United States of America, by and through R. Trent Shores, United States Attorney for the Northern District of Oklahoma, and Cathryn D. McClanahan and Nolan Fields, Assistant United States Attorneys, and notifies this Court (particularly Magistrate Judge Jayne) of this Court's Opinion and Order (Dkt. 207) ("Opinion and Order"), which bears directly on Defendant Osage Wind, LLC's pending First Motion to Compel Discovery Against the United States (Dkt. 177) and Defendants' First Motion to Compel Against the Osage Minerals Council ("OMC") (Dkt. 179) (collectively "Motions").

Defendants seek discovery from the United States and the OMC directly related to these parties' conduct to establish various equitable, affirmative defenses. This Opinion and Order removes any question of whether the subject documents sought by Defendants maintain any relevancy in this proceeding going forward. Considering the Court dismissed Defendants'

equitable, affirmative defenses, particularly those based on the United States' and the OMC's conduct, Defendants' discovery seeking to probe the conduct of its opponents cannot proceed.

1. Defendant Osage Wind, LLC ("Osage Wind") filed its First Motion to Compel Against the United States (Dkt. 177) on August 12, 2020. The United States filed its Response in Opposition (Dkt. 187) on September 2, 2020. Osage Wind filed its Reply (Dkt. 191) on September 16, 2020.

2. The scope of Osage Wind's Motion to Compel Against the United States was focused on the conduct (communications or correspondence) of the United States, which, in light of the Court's Opinion and Order barring equitable, affirmative defenses, has been confirmed as not relevant to the case.

3. Defendants filed their First Motion to Compel Against the OMC (Dkt. 179) on August 18, 2020. The OMC responded with its Brief in Opposition (Dkt. 188) on September 8, 2020. Defendants filed their Reply (Dkt. 193) on September 22, 2020.

4. The scope of Defendants' Motion to Compel Against the OMC primarily focused on the conduct (communications or correspondence) of the OMC, which, as noted above, has been confirmed as not relevant to this case.

5. Osage Wind argued the communications it seeks directly relate to its defenses:

Suffice it to say, nothing that Judge Frizzell or the Tenth Circuit has decided precludes discovery into communications that bear directly on the Defendants' defenses to equitable relief, including waiver, estoppel, laches, and inequitable conduct by the United States and/or the OMC.

Osage Wind's Reply, Dkt. 191 at 8.

6. Specifically, the Court held that "Osage Wind is precluded from asserting the equitable defenses of estoppel, laches, waiver, unclean hands, and *in pari delicto*" in granting the OMC's Motion for Judgment on the Pleadings (Dkt. 204). Opinion and Order, Dkt. 207 at 11.

7. Counsel for the United States has conferred with counsel for the OMC and is authorized to report that the OMC supports this Notice.

8. Notably, the issue of Defendants' bad faith remains pertinent to damages and remedies, despite the preclusion of Defendants' equitable defenses by the Court. Accordingly, the pending Motions to Compel from the United States (Dkt. 175) and the OMC (Dkt. 183) directed at Defendants remain active.

For the above-stated reasons, the United States respectfully requests that this Court apply the findings of its Opinion and Order when ruling on Osage Wind's and Defendants' Motions to Compel. By precluding Defendants' equitable, affirmative defenses, the Court made the object of Osage Wind's and Defendants' Motions moot.

Respectfully submitted,

UNITED STATES OF AMERICA

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